

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

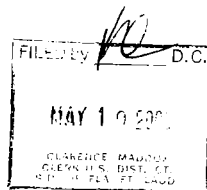
CASE NO. 00-6028-CR-DIMITROULEAS

Plaintiff,

vs.

DAVID G. TRACY,

Defendant.



**ORDER**

THIS CAUSE having been heard upon Defendant's pro se May 15, 2000 Motion To Dismiss, and the Court having heard arguments on May 15, 2000 finds as follows:

1. Any failure to arraign the Defendant would have been due to his failure to cooperate with either the Magistrate Judge [DE-14] and [DE-15], or this Court [DE-22].
2. Arraignment is not necessary when the Defendant knows what he is accused of and is able to adequately defend himself. U.S. v. Hart, 457 F. 2d 1087 (10<sup>th</sup> Cir. 1972) cert. denied, 93 S.Ct. 150 (1972).
3. When this Court, on May 15, 2000, asked the Defendant how he pled, the Defendant would not enter a plea. So, this Court, in an abundance of caution, entered another not guilty plea.
4. Rule 5, Federal Rules of Criminal Procedure does not apply to arrests upon indictment. Masters v. Eide, 353 F. 2d 517 (8<sup>th</sup> Cir. 1965), and no prejudice has been shown, Carter v. U.S., 388 F. Supp. 1334 (W.D. Pa. 1975) affirmed 517 F. 2d 1397 (3d Cir.1975). On February 29, 2000 the Defendant apparently waived the reading of the Indictment, and a Not Guilty Plea was entered by Judge Snow. [DE-15] and [DE-16]. Local Magistrate Rule 1(i)(3)

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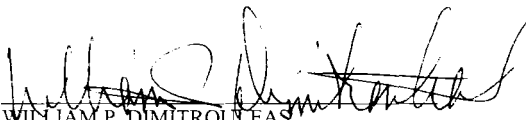
authorizes magistrates to conduct arraignments in criminal cases not triable by the magistrate and to take not guilty pleas.

5. Defendant's objection was first made after the jury was sworn and therefore was untimely. Garland v. Washington, 34 S.Ct. 456 (1914); Cornett v. U.S., 7 F. 2d 531 (10<sup>th</sup> Cir. 1925); by going to trial the Defendant has waived his right to an arraignment. Beaty v. U.S., 203 F. 2d 652 (4<sup>th</sup> Cir. 1953). Prejudice has not been shown. U.S. v. Grote, 632 F. 2d 387 (5<sup>th</sup> Cir. 1980), cert. denied, 102 S.Ct. 98 (1980); U.S. v. Williams, 152 F. 3d 294 (4<sup>th</sup> Cir. 1998).

Wherefore, Defendant's Motion To Dismiss is DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this

19 day of May, 2000.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:

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